IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.68 of 2003
With
Civil Application No.79 of 2003

Eknath Maruti Patil,
since deceased through his
Legal heirs and representatives
1(A) Kisabai Eknath Patil & ors. Appellants

Vs.

Sitaram Maruti Patil,
since deceased through his
legal heirs and representatives
1(A) - Meerabai Sitaram Patil & ors. Respondents

Mr.Vijay Patil for appellants.
Mr.Pratap Patil for respondent nos.1A to 1C.

CORAM: B.H.MARLAPALLE, J.

March 15, 2007.

P.C.

1. Heard Mr.Patil, the learned counsel for the appellants who were the defendants in Regular Civil Suit No.392 of 1981. The present respondents represented by late Sitaram Maruti Patil had filed the said suit claiming their half share in the property of the deceased Janardhan. Shri Maruti Patil, resident of village Peth in Walwa Taluka of Sangli District had three sons viz. Eknath, Janardhan and Sitaram in the same order and the suit was instituted by the youngest son Sitaram. He claimed before the trial Court that the second

brother Shri Janardhan died on 5/6/1979 issueless and all the property of the three brothers was ancestral property, consequently he was entitled for the half share in Janardhan's property along with Eknath, the eldest brother. Eknath contested the suit on the ground that Janardhan had signed a Will which was registered on or about 30/11/1978 and bequeathed all his property in favour of the eldest brother. Consequently the plaint of the suit came to be amended raising a challenge to the legality of the Will and more particularly on the ground that Janardhan was not a normal person, he was always sick and he was not of sound mind to execute the said Will. The trial Court proceeded to examine whether Janardhan bequeathed his share in the suit property in favour of defendant Eknath as per the Will dated 30/11/1978 and answered it in the affirmative. The suit property sought to be bequeathed was agricultural land, residential house and one electric motor. The trial Court held that the motor was self-acquired property of Eknath and on the basis of the evidence of the attesting witnesses it held that Will was legal.

2. When the plaintiff filed Regular Civil Appeal

No.474 of 1986, the learned Judge of the lower Appellate Court examined the issue of the legality of the Will on the basis of the evidence that was placed before the trial Court. It held that on the day the Will was signed admittedly deceased Janardhan was staying with Eknath and his age as mentioned on the Will was 47 years. It examined the contents of the Will and noted that it was surrounded by suspicion. It also noted that subsequent to the suit filed by the plaintiff, RCS No. 137 of 1994 was filed by the LRs of defendant Eknath claiming that in the year 1987 Sitaram, the plaintiff had executed a Will in their favour and bequeathed all property to them. It was further claimed that Sitaram was suffering from leprosy and, therefore, he was staying in a hut erected on the agricultural land itself and for 18 years or so he had never returned to the house in the village. It was also averred that he was not legally married and he had been living with a woman of another community from whom he begot two daughters. The said suit was dismissed by the trial Court. The lower Appellate Court, therefore, held that though the witnesses to the Will were examined and they had supported the Will, there was nothing on record to show that deceased Janardhan was a person of sound

mind when he had purportedly executed the Will in favour of Eknath. Obviously on the Will there was no endorsement of a qualified doctor regarding his mental health conditions. Even in the plaint it was very clearly contended by the present plaintiffs that Janardhan was a sick person who could not apply his own mind. The lower Appellate Court also scanned the evidence adduced before the trial Court and came to the conclusion that Janardhan was not actually cultivating the land of his share or along with the defendant No.1. Some of the contents of the Will were contradictory and far from being reliable. The anewari relied upon for partition was not fully implemented so as to conclude that deceased Janardhan's share was ever put in his possession. As the Will itself was found to be an unreliable document, its veracity was not accepted by the lower Appellate Court and when the relationship between the plaintiff and the defendant was not disputed,it proceeded to hold that the suit was required to be decreed by partitioning the share of Janardhan amongst two brothers i.e. Sitaram and Eknath. This view taken by the lower appellate court cannot be termed as perverse or illegal and, therefore, there could be no substantial question of law that would

arise for consideration of this Court.

3. Mr.Patil also submitted that during the pendency of the appeal the original plaintiff died and, therefore, his LRs had submitted an application for being brought on record as the appellants. As per Mr. Patil though the notices were issued on this application, at no point of time the application was allowed and in the absence of such a specific order the learned Advocate for the appellants had entered their names as the appellants and the appeal proceeded. Perusal of the R. & P. shows that the appeal was initially filed before the District Court at Sangli and registered as Regular Civil Appeal No.474 of 1986. However, on establishment of an Additional District Judge's Court at Islampur, the appeal came to be transferred to the said Court and came to be renumbered as Regular Civil Appeal No.5 of 1999. The notices issued by the Court at Islampur on 22/9/2000 clearly indicated that the original plaintiffs LRs were already brought on record. Even otherwise the appeal memo which is available on record shows that the application at Exhibit 11 was filed by the LRs of the plaintiff for being brought on record and the said application was allowed on

5/10/1991. Mr.Patil has pointed out the subsequent order purported to have been passed by the lower Appellate Court stating that this amendment was unauthorised and, therefore, the order was recalled. In short it was contended by Mr.Patil that the pending appal before the Court had already abated and there was no reason for the lower appellate Court to decide the same. This submission cannot be accepted. First of all an application was filed for bringing the LRs on record, notices were issued by the Court and it cannot be said that the LRs did not take any steps to apply to the Court for being brought on record. If the defendants were really aware of the order passed by the lower Appellate Court after the order dated 5/10/1991, they had the remedy of filing a review petition before the very same Court as soon as the suit was decreed against them. They did not do so and even otherwise there is no application on record at any time before the appeal was decided pointing to the very same Court that the appeal had abated and it could not go on, on merits. Before the District Court at Sangli, the appeal was pending for thirteen years before it was transferred to the Court at Islampur and the defendants did not file any application stating that the appeal pending was in

fact abated.

4. Under these circumstances, there is no case made out to entertain this appeal and the same is hereby dismissed in limine, as it does not raise any substantial question of law for consideration.

5. Civil Application No.79 of 2003 does not survive and the same stands rejected. Ad-interim order stands vacated.

(B.H.MARL